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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,463	11/06/2003	Toshiaki Hirata	566.37536CX1	8553

20457 7590 08/27/2004

ANTONELLI, TERRY, STOUT & KRAUS, LLP  
1300 NORTH SEVENTEENTH STREET  
SUITE 1800  
ARLINGTON, VA 22209-9889

EXAMINER
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NGUYEN, THU HA T

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/701,463

**Applicant(s)**

HIRATA ET AL.

**Examiner**

Thu Ha T. Nguyen

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/06/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 2 recites the limitation "said job net" in fourth and fifth paragraphs of page 3, lines 8 and 16. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

### Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

4. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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5. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-5 are rejected under the judicially created doctrine of double patenting over claims 1-4 and 10 of U. S. Patent No. 6,665,716 owned by the same inventor and/or assignee. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the reasons given below.

7. Regarding to claim 1, claims 1 and 10 of U.S. Patent No. 6,665,716 recited all limitations in claim 1 (see col. 28 lines 23-42, col. 30, lines 33-52). The claim invention in the instant application is fully disclosed in the patent and it is **broader** than the claim invention in the patent. No new invention or new improvement is being claimed in the instant application. Applicants are now attempting **to claim broadly that which had been previously described in more detail in the claims of the patent** (*In re Van Ornum*, 214 USPQ 761 CCPA 1982).

8. Regarding to claim 2, claim 1 and 3 of the above patent recites all limitations in claim 2 (col. 28, lines 35-54, col. 28, lines 65-col. 29, lines 14).

9. Regarding to claim 3, claim 2 and 4 of the above patent recites all limitations in claim 3 (col. 28, lines 56-62, col. 29, lines 15-24).

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10. Regarding to claim 4, claims 1 and 10 of the above patent recites all limitations in claim 4 (see col. 28 lines 23-42, col. 30, lines 33-52).

11. Regarding to claim 5, claims 1 and 10 of the above patent recites all limitations in claim 5 (see col. 28 lines 23-42, col. 30, lines 33-52).

12. Each of the patent claims is narrower than the claims in the instant application. It would have been obvious to one of ordinary skill in the art at the time the invention was made to omit elements when the remaining elements perform as before. A person of ordinary skill could have arrived at the present claims by omitting the details of the patented claims. See *In re Karlson* (CCPA) 136 USPQ 184, decided January 16, 1963 ("Omission of element and its function in combination is obvious expedient if remaining elements perform same function as before").

### **Claim Rejections - 35 USC § 103**

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bigus et al.**, (hereinafter Bigus) U.S. Patent No. **5,442,730**.

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15. As to claim 1, **Bigus** teaches the invention substantially as claimed, including a method of specifying a delay factor, for specifying a delay factor in processing jobs which are executed in a predetermined order by a computer system having a plurality of computers, wherein said method comprises:

a collecting step in which history information expressing history of execution of a job is collected from each computer assigned each of said jobs which are executed in a predetermined order (abstract, figure 8, col. 3 lines 38-55, col. 4 lines 54-67); and

a specifying step in which a job which became a delay factor in processing said jobs, and a part of the computer system, which undertakes transfer of said job which became the delay factor, are decided, in accordance with said history information and definition information expressing an execution schedule of each job assigned said computers (abstract, figures 1, 7-10, col. 38-55). **Bigus** discloses the step of collecting history information from one computer system (abstract, figure 8) could be collected history information from each computer. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made that **Bigus** implicitly discloses collecting step of history information from one computer equivalent to collecting history information from each computer disclosed in the instant claim. A person of ordinary skill in the art would have recognized that **Bigus** performs the same function in substantially the same way to reach substantially the same result to provide an efficient communication system that can collect history information from one computer as same as collect history information from each computer.

16. As to claim 2, **Bigus** teaches the invention substantially as claimed, wherein said history information is information that can specify an execution start time at which said each computer start execution of the job, an execution end time at which that computer ended the job, and an execution time which that computer required to execute the job (col. 2 lines 38-46); said definition information is information that can specify a planned start time, a planned time at which execution of each job is started, a planned end time, a planned time at which execution of each job is ended, and a planned execution time, a planned time required for execution of each job (col. 2 lines 59-col. 3 lines 7); and said specifying step comprises: a first step in which a computer assigned to a job whose execution time exceeds a planned execution time by more than a predetermined degree is extracted as a delay factor in processing said job net; and a second step in which, with respect to a job whose execution end time is latest among jobs executed just prior to a job whose execution start time is delayed from a planned start time by more than a predetermined degree, when said execution end time is not delayed from a planned end time by more than a predetermined degree, said pad of the computer system that undertakes transfer between said job whose execution start time is delayed from the planned start time by more than the predetermined degree and said job executed just prior to the job in question is extracted as a delay factor in processing said job net (col. 3 lines 42-48).



17. As to claim 3, **Bigus** teaches the invention substantially as claimed, wherein said second step when a same computer is assigned to said job whose execution start time is delayed from the planned start time by more than the predetermined degree and to said job executed just prior to the job in question, said computer is extracted as the delay factor, and when different computers are respectively assigned to said job whose execution start time is delayed from the planned start time by more than the predetermined degree and to said job executed just prior to the job in question, a network between said computers is extracted as the delay factor (col. 3 lines 42-48). **Bigus** discloses that the delay cost function could be function of multiple variables. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to extract the job in question as the delay factor when processing in the same computer and to extract the network between computers as the delay factor when processing in different computers. It would have been obvious to use these delay factors as variables for the delay cost function because **Bigus** discloses that the function can be dependent on multiple variables.

18. As to claim 4, **Bigus** teaches the invention substantially as claimed, including a recording medium that stores therein a program to be read and executed by an electronic computer, wherein said program is one for specifying a delay factor in processing a job net executed by a computer system having a plurality of computers (abstract, figure 8, col. 3 lines 38-55, col. 4 lines 54-67); and said program makes said electronic computer execute: a collecting step in

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which history information is collected from each computer assigned each of a series of jobs which are executed in a predetermined order and constitute said job net to said electronic computer, said history information expressing a history of executing a job which constitutes said job net and is assigned to said each computer; and a specifying step in which a job which became a delay factor in processing said job net, and a part of the computer system, which undertakes transfer of said job which became the delay factor, are decided, based on said history information and definition information expressing an execution schedule of each job assigned said computers (abstract, figure 1, 7-10, col. 3 3lines 38-55). **Bigus** discloses the step of collecting history information from one computer system (abstract, figure 8) could be collected history information from each computer. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made that **Bigus** implicitly discloses collecting step of history information from one computer equivalent to collecting history information from each computer disclosed in the instant claim. A person of ordinary skill in the art would have recognized that **Bigus** performs the same function in substantially the same way to reach substantially the same result to provide an efficient communication system that can collect history information from one computer as same as collect history information from each computer.

19. As to claim 5, **Bigus** teaches the invention substantially as claimed, including a management unit for specifying a delay factor in processing jobs which are executed in a predetermined order by a computer system having a

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plurality of computers; wherein said management unit comprises: means for collecting history information from each computer assigned to each of said jobs, said history information expressing a history of executing a job which is assigned to said each computer (abstract, figures 1, 8, col. 3 lines 38-55, col. 4 lines 41-67); and means for deciding a job, which became a delay factor in processing said jobs , and a part of the computer system which, undertakes transfer of said job which became the delay factor, based on said history information and definition information expressing an execution schedule of each job assigned said computers (abstract, figure 1, 7-10, col. 3 3lines 38-55). **Bigus** discloses the step of collecting history information from one computer system (abstract, figure 8) could be collected history information from each computer. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made that **Bigus** implicitly discloses collecting step of history information from one computer equivalent to collecting history information from each computer disclosed in the instant claim. A person of ordinary skill in the art would have recognized that **Bigus** performs the same function in substantially the same way to reach substantially the same result to provide an efficient communication system that can collect history information from one computer as same as collect history information from each computer.

### Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see PTO-892 attachment).

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21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Ha Nguyen, whose telephone number is (703) 305-7447. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T. Alam, can be reached at (703) 308-6662.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications.

Thu Ha Nguyen

August 20, 2004

  
HOSAIN ALAM  
SUPERVISORY PATENT EXAMINER